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October 25, 2004

VIA HAND DELIVERY

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

04-00379

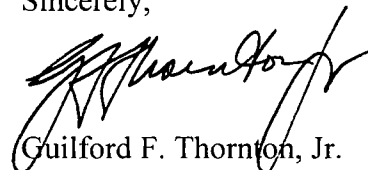
Re: Petition of Frontier Communications, Inc for a Declaratory Ruling

Dear Chairman Miller:

On behalf of Frontier Communications, Inc, formerly known as Citizens Telecom ("Frontier"), I am enclosing an original and 13 copies of Frontier's petition requesting that the Authority declare that Frontier has the necessary authority to provide competing telephone services to consumers residing in areas historically served by Ben Lomand Rural Telephone Cooperative, Inc.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

GFT/lb

cc Gregg Sayre
Mike Swatts

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: PETITION OF FRONTIER
COMMUNICATIONS, INC. FOR
DECLARATORY RULING**

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)
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No. _____

**PETITION OF FRONTIER COMMUNICATIONS, INC. FOR
DECLARATORY RULING THAT IT CAN PROVIDE COMPETING
SERVICES IN TERRITORY CURRENTLY SERVED BY
BEN LOMAND RURAL TELEPHONE COOPERATIVE, INC.**

Pursuant to T.C.A. §§ 4-5-223, 29-14-103, 65-2-104 and TRA Rule 122-1-2-.05, Frontier Communications, Inc ("Frontier") requests that the TRA declare that Frontier has the necessary authorization to provide competing telephone services in areas served by Ben Lomand Rural Telephone Cooperative, Inc. ("Ben Lomand")

1. Frontier, formerly known as Citizens Telecom, is a competing local exchange carrier ("CLEC") as defined by T.C.A. § 65-4-101. The TRA granted Frontier a statewide certificate of convenience and necessity as a competing telecommunications provider by Order, dated June 27, 1996 (Docket No. 96-00779). Frontier is regulated by the TRA pursuant to T.C.A. §§ 65-4-101 and 65-4-104.

2. Frontier is an affiliate of Citizens Telecommunications Company of Tennessee, LLC ("Citizens"). Citizens is an incumbent local exchange carrier ("ILEC") as defined in T.C.A. § 65-4-101, serving customers in White, Warren, Weakley, Putnam, and Cumberland counties in Tennessee.

3. Ben Lomand is a telephone cooperative as defined by T.C.A. § 65-29-102, and as such, it is largely unregulated by the TRA. *See* T.C.A. § 65-29-130. Ben Lomand serves customers in White, Warren, Van Buren, Grundy, and portions of Franklin, Coffee and Bedford counties in Tennessee.

4. Ben Lomand also owns Ben Lomand Communications, Inc, (“BLC”), a CLEC, which aggressively competes with Citizens in McMinnville and Sparta, Tennessee. Ben Lomand also owns 50% of Volunteer First Services, Inc (“VFS”), which was recently certificated by the Authority to operate as a CLEC in Crossville, Tennessee, another market served by Citizens. (TRA Docket No. 03.0067)

5. The TRA has jurisdiction to grant the relief requested pursuant to T.C.A. §§ 4-5-223, 29-14-103, 65-2-104 and TRA Rule 1220-1-2-.05

6. Frontier desires to compete in the territory served by Ben Lomand. However, Ben Lomand has taken the position that Frontier is statutorily prohibited from competing in Ben Lomand’s territory. (See attached letter from LeVoy Knowles, CEO of Ben Lomand, marked Exhibit A).

7. On October 11, 2004, the Authority approved an interconnection agreement (the “Interconnection Agreement”) between Frontier and Ben Lomand, dated August 2, 2004, a copy of which is attached hereto as Exhibit B. It provides as follows:

13.1 This Agreement will become effective upon:

(a) issuance of a final order by a regulatory body or court with the requisite jurisdiction to grant Citizens with all necessary regulatory approval and certification to offer local exchange and local exchange access services in the geographic areas to which this Agreement applies; and

(b) approval of this Agreement by the Commission.

The Parties recognize that, in the absence of a final order under subsection (a) immediately above, a question of law exists with respect to whether the state commission has statutory authority to authorize Citizens or any other carrier to provide local exchange and/or local exchange access services in the areas of the State of Tennessee served by BLTC or other telephone cooperatives. Notwithstanding this uncertainty, the Parties have acted in good faith to negotiate this Agreement and fulfill their obligations under the Act in order to avoid unnecessary dispute and delay. By executing this Agreement, neither Party waives any right with respect to issues related to the position either Party may assert in any forum with respect to issues related to the matter of the state commission's statutory authority with respect to geographic areas served by telephone cooperatives or any other matters.

7. Frontier contends that the conditions set forth in Paragraph 13 1 (a) and (b) have been met. The TRA previously has certificated Frontier to provide services statewide as a CLEC. In addition, the Authority now has approved the Interconnection Agreement. Ben Lomand disagrees and refuses to interconnect in the absence of additional regulatory or judicial action

8. By virtue of the position taken by Ben Lomand, an actual case and controversy exists between Citizens and Ben Lomand regarding the existence of any remaining statutory or regulatory monopoly rights of Ben Lomand within its historical territory. Until this dispute is decided by the TRA, Frontier is prevented from competing in the area served by Ben Lomand.

9. Approval of this Petition is warranted because (1) Frontier has already been granted a certificate of convenience to operate statewide, and (2) the Interconnection Agreement has been approved. Further there is no prohibition on Frontier's operation within Ben Lomand's boundaries for the following reasons:

a. T.C.A. §65-4-201, which protects ILECs with less than 100,000 access lines from encroachment, is not applicable because Ben Lomand is not an ILEC. T.C.A. § 65-4-101(d) defines "incumbent local exchange telephone company" as a "public utility offering and providing basic local exchange telephone service . . . pursuant to tariffs approved by the [TRA] .

. .” T.C.A. § 65-4-101(d). A “cooperative organization” is not a “public utility.” T.C.A. § 65-4-101(a)(5). Moreover, Ben Lomand does not file tariffs with the TRA

b. Any territorial protection granted to Ben Lomand by state law (see T.C.A. § 65-29-102) is preempted and prohibited by 47 U.S.C. § 253(a), which states, “No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” The FCC has ruled that the above-cited T.C.A. § 65-4-201(d) is unenforceable as an unlawful prohibition against competition *In The Matter Of AVR, L P d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, 1999 WL 335803 (F.C C.), 14 F.C.C. Rcd. 11064 (1999), *pet for reh'g den*, 2001 WL 12939 (F.C C), 16 F C C. Rcd. 1247 (2001) (Copies attached as Exhibit C).

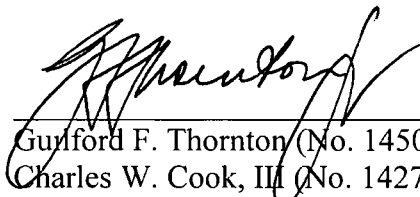
c. T C.A § 65-29-130 provides that the TRA may exercise jurisdiction over telephone cooperatives such as Ben Lomand for “. .(2) the establishment of territorial boundaries; and (3) The hearing and determining of disputes arising between one (1) telephone cooperative and other telephone cooperatives, and between telephone cooperatives and any other type of person, corporation, association, or partnership rendering telephone service, relative to and concerning territorial disputes; . . .” T.C.A. § 65-29-130(a).

d. TCA 65-4-123 sets forth Tennessee General Assembly’s legislative intent that the “policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services **by permitting competition in all telecommunications services markets...**” (emphasis added). In addition, the relief requested is

equitable given the fact that Ben Lomand, through its subsidiaries, is competing in areas served by Frontier's affiliate ILEC. Thus, it would be unfair to prevent Frontier from providing competing services in Ben Lomand's territory.

WHEREFORE, Frontier requests that the TRA declare that it has the necessary regulatory authority to provide local exchange and local exchange access services to the citizens in the geographic areas historically served by Ben Lomand, to which the Interconnection Agreement applies.

Respectfully submitted,



Gunford F. Thornton (No. 14508)
Charles W. Cook, III (No. 14274)
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(615) 259-1450

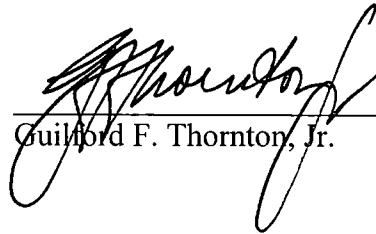
Attorneys for Frontier Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded via U.S. mail to the following on this the 26th day of October, 2004

H LaDon Baltimore
Farrar & Bates
211 Seventh Avenue North, Suite 420
Nashville, TN 37219

Office of the Attorney General
Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, TN 37202



Guilford F. Thornton, Jr.



TELEPHONE: (931) 668-4132 • WEBSITE: www.blomand.net
311 North Chancery Street • P. O. Box 670 • McMinnville, Tennessee 37111-0670

January 10, 2003

Mr. Robert M. Jeffrey
Interconnection Manager
Frontier – A Citizens Communications Company
180 South Clinton Avenue, 5th Floor
Rochester, New York 14646

Dear Mr. Jeffrey:

This is in response to your letter dated December 20, 2002, to Ben Lomand Rural Cooperative ("Ben Lomand"). For future reference, the name of our company is Ben Lomand Rural Telephone Cooperative, Inc.

Citizens was granted competitive carrier authority in Tennessee with respect to an application stating its intent to serve the "greater Nashville, Memphis, Chattanooga, and Knoxville areas." Citizens' certification must be considered in light of the Tennessee Regulatory Authority's position that it does not have authority to authorize competing services in the territory of the telephone cooperatives. Under current state regulatory policy, it appears that certification in areas served by cooperatives cannot be obtained from the TRA. Therefore, please advise us to how Citizens intends to obtain authority to provide service in the Ben Lomand territory in light of existing state law and confirming TRA policy.

Ben Lomand is fully willing to discuss potential interconnection arrangements consistent with all applicable rules and regulations and intends to negotiate in good faith the terms of a fair and mutual interconnection agreement. As you should be aware, Citizens Telecommunications Company and Ben Lomand Communications, Inc. ("BLC"), a wholly owned affiliate of Ben Lomand, already have a negotiated interconnection agreement approved and in place covering interconnection between Citizens and BLC in areas adjacent to the Ben Lomand Cooperative service area. The managements of both Citizens and Ben Lomand have arrived at an interconnection agreement through negotiation. Accordingly, Ben Lomand would propose, for initial discussion purposes, that the terms of the Citizens/BLC agreement be restated to reflect specific changes in facts, circumstances, and experience for use between Citizens and Ben Lomand.

Ben Lomand's affiliate BLC is competing with Citizens in the provision of local exchange carrier services in the neighboring towns of Citizens' incumbent service area, and now with your request, Citizens apparently intends to consider competing with Ben Lomand in the adjacent Ben Lomand incumbent cooperative service area. Therefore, use

EXHIBIT

A

Mr. Robert M. Jeffery

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January 10, 2003

of the same interconnection terms and agreement between Ben Lomand and Citizens will result in both parties competing with each other on terms that are mutual and equal. Moreover, basic use of the already negotiated agreement will avoid considerable expense for the parties and potentially for the TRA to develop terms that are already contained in the existing Citizens/BLC agreement.

Ben Lomand hopes that Citizens will understand the benefits of this approach. With your concurrence, Ben Lomand will develop and forward an initial, modified version of the existing Citizens/BLC interconnection document to reflect terms and conditions for the arrangement between Citizens and Ben Lomand. In the meantime, Citizens should resolve the manner in which Citizens will reconcile its certification status in Tennessee, as well as other provisions of Tennessee Law and TRA rulings, including the question of the specific provision in Tennessee law under which Ben Lomand Rural Telephone Cooperative, Inc. operates which specifically provides, "that there shall be no duplication of service where reasonably adequate telephone service is available". Finally, as the parties move forward with these discussions, Citizens should recognize that Ben Lomand is a Rural Telephone Company as defined under the Telecommunications Act of 1996. We look forward to your response.

Sincerely,



Levoy Knowles
CEO

LK:cb



311 North Chancery Street • P. O. Box 670 • McMinnville, Tennessee 37111-0670

TELEPHONE: (931) 668-4131 • WEBSITE: www.blomand.net

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2004 AUG -4 PM 1:59

August 2, 2004

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

DOCKET NO.
04-00233

RE: Interconnection Agreement - Ben Lomand & Frontier

Dear Chairman Miller:

Enclosed for TRA approval are an original and 14 copies of a Local Interconnection Agreement between Ben Lomand Telephone Cooperative, Inc. and Frontier Communications of America, Inc.

A check in the amount of fifty dollars (\$50.00) to cover this filing fee is enclosed.

Please stamp as received the receipt copy and return it in the enclosed envelope.

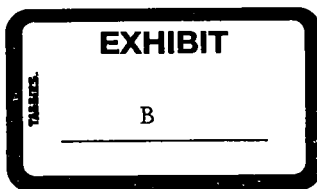
If you have any questions please call Gregg Sayre for Frontier Communications of America, Inc. at (585)-777-7270 or Levoy Knowles for Ben Lomand Telephone Cooperative, Inc. at (202)-296-8890.

Sincerely,
Ben Lomand Rural Telephone Coop., Inc.

Levoy Knowles
CEO

LK/bh

Enclosure



**AGREEMENT FOR
LOCAL WIRELINE NETWORK INTERCONNECTION**

between

Ben Lomand Telephone Cooperative, Inc.

and

Frontier Communications of America, Inc.

Dated: July 6, 2004

Frontier-Ben Lomand Document

**AGREEMENT FOR
LOCAL WIRELINE NETWORK INTERCONNECTION**

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AGREEMENT FOR LOCAL WIRELINE NETWORK INTERCONNECTION

This Agreement For Local Wireline Network Interconnection ("Agreement") made this 6th day of July 2004, is by and between Ben Lomand Telephone Cooperative, Inc a Tennessee corporation, having its principal place of business at 311 North Chancery Street, P O Box 670, McMinnville, Tennessee 37111 ("BLTC") and Frontier Communications of America, Inc , a Delaware corporation, having its principal place of business at 180 S. Clinton Avenue, Rochester, New York 14646 ("FCA") BLTC and FCA may also be referred to herein singularly as a "Party" or collectively as "the Parties"

SECTION 1. RECITALS AND PRINCIPLES

BLTC is a telephone cooperative local exchange carrier authorized to provide telecommunications services in the State of Tennessee, and

FCA is a local exchange carrier authorized to provide telecommunications services in the State of Tennessee, and

The nature of the interconnection arrangement between the Parties established pursuant to this Agreement is of mutual benefit to both Parties and is intended to fulfill their needs to exchange local traffic, and

The Parties have in good faith negotiated, and agreed on local interconnection terms and conditions as set forth below, and

Notwithstanding the mutual commitments contained in this Agreement, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement In consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BLTC and FCA hereby covenant and agree as follows:

SECTION 2. GENERAL DEFINITIONS

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement Additional definitions that are specific to the matters covered in a particular section may appear in that section

2 1. "Access Service Request" ("ASR") means the industry standard forms and supporting documentation used for ordering access services The ASR will be used to identify the specific trunking and facilities request for interconnection

2 2 "Automatic Number Identification" ("ANI") refers to the number transmitted through the network identifying the calling party

2 3 "Carrier" means a telecommunication company authorized by the Commission to provide local exchange telecommunications services in the State of Tennessee

2 4. "CLLI Codes" means Common Language Location Identifier Codes

2 5 "Commission" means the Tennessee Regulatory Authority

2 6. "DS1" is a digital signal rate of 1 544 Megabits per second ("Mbps")

2 7 "DS3" is a digital signal rate of 44 736 Mbps

2 8 "Interconnection" in this Agreement refers only to the physical linking of two networks for the mutual exchange of traffic and only for purposes of transmitting and routing telephone exchange traffic or access traffic or both. Interconnection does not include the transport and termination of interexchange traffic.

2 9 "Local Exchange Routing Guide" ("LERG") is a Telecordia reference document used by carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.

2 10 "Local Traffic" means traffic that is originated by an end user of one Party and terminates to an end user of the other Party within BLTC's local serving area, including mandatory local calling scope arrangements established and defined by the applicable state commission. A mandatory local calling scope arrangement is an arrangement that provides end users a local calling scope, i.e. Extended Area Service ("EAS"), beyond their basic exchange serving area. Therefore local traffic, for purposes of this Agreement, includes both intra-exchange calls and EAS calls.

2 11 "Point of Interconnection" ("POI") means the physical location(s) at which the Parties' networks meet for the purpose of establishing interconnection.

2 12 "Rating Point" is the V&H coordinates associated with a particular telephone number for rating purposes.

2 13 "Transport and Termination" denotes transmission and switching facilities used for the exchange of local traffic between interconnected carrier networks.

2 14 "Wire Center" denotes a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire Center can also denote a building in which one or more central offices, used for the provision of basic exchange services and access services, are located. However, for purposes of interconnection service, Wire Center will mean those points eligible for such connections as specified in the FCC Docket No. 91-141 (Expanded Interconnection with LEC Facilities, Transport, Phase I), and rules adopted pursuant thereto.

SECTION 3. NETWORK INTERCONNECTION

The Parties hereto, agree to interconnect their facilities and networks for the transport and termination of local traffic.

3 1 Interconnection Trunking Arrangements

3 1 1 The Parties will interconnect their networks as specified in the terms and conditions contained in Attachment A attached hereto and incorporated by reference. POIs set forth in this Agreement, may be modified from time to time by either Party with the written consent of the other Party, which consent will not be unreasonably withheld.

3 1 2 Each Party will be responsible for the engineering and construction of its own network facilities on its side of the POI.

3 1 3 The Parties mutually agree that all interconnection facilities will be sized according to mutual forecasts and sound engineering practice, as mutually agreed to by the Parties during planning-forecasting meetings.

3 1 4 The Parties agree to establish trunk groups of sufficient capacity for local interconnection purposes. The Parties will mutually agree where one-way or two-way trunking will be available. The mutually agreed upon technical and operational interfaces, procedures, grade of service and performance standards for interconnection between the Parties are set forth in Attachment B, attached hereto and will conform with all generally accepted industry standards with regard to facilities, equipment, and services.

Each Party shall make available to the other Party trunks over which the originating Party can terminate Local Traffic of the end users of the originating Party to the end users of the terminating Party.

3 1.5 This Agreement is applicable only to the incumbent service areas of BLTC within the State of Tennessee. Both Parties agree to deliver only traffic within the scope of this Agreement over the connecting facilities as specified in Attachment A. Neither Party shall provide an intermediary or transit traffic function for the other Party's connection of its end users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary functions. This Agreement does not obligate either Party to utilize any intermediary or transit traffic function of the other Party.

3 2 Testing and Trouble Responsibilities

BLTC and FCA agree that each will share responsibility for all maintenance and repair of trunks/trunk groups. The Parties agree to:

3 2 1 Cooperatively plan and implement coordinated repair procedures for the meet point and local interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

3 2 2. Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.

3 2 3 Promptly notify each other when there is any change affecting the service requested, including the date service is to be started.

3 2 4. Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date.

3 2 5 Perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other.

3 2 6 Provide each other with a trouble reporting number to a work center that is staffed 24 hours a day/7 days a week.

3 2 7 Immediately report to each other any equipment failure which may affect the interconnection trunks.

3 2.8. Based on the trunking architecture, provide for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.

3 3 Interconnection Forecasting

3 3 1 Consistent with Section 3 1, the Parties agree to work cooperatively to forecast local traffic trunk requirements. The Parties will establish joint forecasting responsibilities for traffic utilization over trunk groups. The Parties recognize that planning for, and the availability of, facilities and/or equipment are dependent on cooperative forecasting between the Parties. Intercompany forecast information will be provided by the Parties to each other at least twice a year. When necessary, the Parties agree to provide additional trunking needed to maintain the grade of service. The Parties agree to connect trunks at a minimum DS1 level to exchange local traffic on a bi-directional basis. All connecting facilities will be at a DS1 level, multiple DS1 level, or DS3 level and will conform to industry standards. Where local traffic volumes are not established, two-way trunk groups will be provisioned initially based on forecasts jointly developed by the Parties. FCA must provide the initial two year forecast of its trunk requirements. All trunk facilities will be engineered to a P 01 grade of service. Should a Party identify the

need for more or less trunking facilities between the parties to maintain the grade of service, the Party will provide notice to the other Party in writing

3 3 2 The forecasts will include the number, type and capacity of trunks as well as a description of major network projects anticipated for the following six months. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecast period. The Parties agree to jointly plan for the effects of other traffic on their networks, including issues of network capacity, forecasting and compensation calculation.

3 3 3 All requests from one Party to the other Party to establish, add, change, or disconnect trunks will be made in writing using the industry standard Access Service Request.

3 4 Reciprocal Compensation For the Transport and Termination of Interchanged Traffic

3 4 1 The Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that neither Party has any obligation to provide any monetary compensation to the other Party for the other Party's origination or termination of local traffic originating on one Party's network and terminating on the other Party's network within the scope of this Agreement. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the provision of local exchange service to end users located in the specific geographic areas that are the subject of this Agreement and all other terms and conditions set forth in this Agreement.

3 4 2 A maintenance service charge applies whenever either Party requests the dispatch of the other Party's personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist:

3 4 2 1 No trouble is found in the interconnection trunks, or

3 4 2 2 The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched, or

3 4 2 3 Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the interconnection trunk does not exceed maintenance limits.

3 4 3 If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled.

3 4 4 Billing for maintenance service by either party is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates: (1) basic time, (2) overtime, or (3) premium time as defined in BLTC's interstate access tariff.

3 5 Reserved for Future Use

3 6 Coordination of Transfer of Service

3 6 1 Coordination of Transfer of Service To serve the public interest of end users, the Parties agree that when an end user transfers service from one Party to the other Party it will be necessary for the parties to coordinate the timing for disconnection from one Party and connection with the other Party so that transferring end users are not without service for any extended period of time. Other coordinated activities associated with transfer of service will also need to be coordinated between the Parties to ensure quality services to the public.

3 6 2 Procedures for Coordinated Transfer of Service Activities The Parties agree to establish mutually acceptable, reasonable, and efficient transfer of service procedures that utilize the industry

standard LSR format for the exchange of necessary information for coordination of service transfers between the Parties. Each party will designate a local representative for the purpose of exchanging requests for disconnect, service announcement initiation, and number portability activity between the Parties. Ben Lomand will develop mutually agreeable, specific procedures for the exchange of the necessary information pursuant to this subsection.

3 6 3 No Charges for Coordinated Transfer of Service Activities There will be no charges between the Parties or compensation provided by one party to the other Party for the coordinated transfer of service activities described in this Section 3 6

3 6 4 Letter of Authorization Each Party is responsible for obtaining a Letter of Authorization (LOA) from each end user initiating transfer of service from one Party to the other Party. The Party obtaining the LOA from the end user will furnish it to the other Party. Transmission of the LOA by facsimile is preferred in order to expedite order processing.

3 6 5 Transfer of Service Announcement In the case where an end user changes service from one Party to the other Party and the end user does not retain its original telephone number, the Party formerly providing service to the end user will provide a transfer of service announcement on the vacated telephone number. This announcement will provide details regarding the new number that must be dialed to reach this end user. The service announcement will be provided by the Party formerly providing service for a minimum of four months.

3 6 6 Disconnect and Transfer of Service Announcement Coordination for Service Transfers with Change of Number In the case where an end user changes service from one Party to the other Party and the end user does not retain its original telephone number, the Party from which the end user is transferring will honor requests for disconnect and service announcement initiation from the Party to which the end user is transferring. The Party to which the end user is transferring service will provide to the other Party the end user's name, address, current telephone number, new telephone number, and date service should be transferred using the industry standard LSR format. The Party from which the end user is transferring will coordinate with the other Party the disconnect and service announcement initiation to coincide with the service transfer request date. In instances where the transferring end user changes its telephone number, the Party from which the end user is transferring service will place a service announcement on the vacant number no later than 5 00 P M local time on the next business day following the service transfer date. It is recommended that the installation date precede the disconnection date.

3 6 7 Disconnect and Coordination of Local Number Portability for Service Transfers without Change of Number In the case where an end user changes service from one Party to the other Party and the end user retains its original telephone number(s), the Party from which the end user is transferring will honor requests for disconnect and local number portability from the Party to which the end user is transferring. The Party to which the end user is transferring will provide the other Party the end user's name, address, current telephone number, new network number porting information, and date service should be transferred using the industry standard LSR format. The Parties will coordinate the disconnect, connect, and number portability activities in accordance with the North American Numbering Council (NANC) flows.

3 6 8 Combined Transfer of Service Requests. Each Party will accept transfer of service requests from the other Party for one end user that includes combined requests for transfers where the end user will retain one or more telephone numbers and where the end user will not change one or more telephone numbers.

3 6 9 Bulk Requests for Transfer of Service From time to time, either Party may benefit from the transfer of service for groups. The Parties agree to process bulk transfer of service requests for end users having the same billing account number.

3 6 10 Access to the Network Interface Device (NID) Each Party will allow the other Party access to the customer side of the Network Interface Device (NID) consistent with Federal Communication Commission rules. The Party to which the end user is transferring service may move all inside wire from

the other Party's existing NID to one provided by the Party to which the end user is transferring service. Where a NID is of the type which provides for customer access to one side of the NID, the Party to which the end user is transferring service may elect to remove the inside wire at the connection(s) within the customer side of the NID. Where a NID is of an older type not allowing access to the customer side of the NID, the Party to which the end user is transferring service must make a clean cut of the inside wire at the closest point to the NID.

3.7 Service Ordering

Access Service Requests (ASR) will be used by both parties to request trunks and special circuits ordered under this agreement. Local Service Requests (LSR) will be used to order local service including Local Number Portability.

SECTION 4. AUDIT

Either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Agreement. An audit may be conducted no more frequently than once per 12 month period, and only to verify the other Party's compliance with provisions of this Agreement. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days' prior written notice to the audited Party, (ii) subject to the reasonable scheduling requirements and limitations of the audited Party, (iii) at the auditing Party's sole cost and expense, (iv) of a reasonable scope and duration, (v) in a manner so as not to interfere with the audited Party's business operations.

SECTION 5. DISPUTE RESOLUTION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements, the Parties will first confer to discuss the dispute and seek resolution prior to taking any action before any court or regulator, or before authorizing any public statement about or authorizing disclosure of the nature of the dispute to any third party. Such conference will occur at least at the Vice President level for each Party. In the case of FCA, its Vice President of Interconnection, or equivalent officer, will participate in the meeting, and for BLTC, its Executive Vice President, or management person one level below that level, will participate. In the event the Parties are unable to resolve the dispute through conference, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

SECTION 6. FORCE MAJEURE

If the performance of the Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of any of the following:

- 6.1 Fire, explosion, flood, earthquake, hurricane, cyclone, tornado, storm, epidemic, breakdown of plant or power failure,
- 6.2 War, revolution, civil commotion, acts of public enemies, blockade or embargo,
- 6.3 Any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority, or representative of any such government,
- 6.4 Labor difficulties, such as strikes, picketing or boycotts;
- 6.5 Delays caused by other service or equipment vendors.

6.6. Any other circumstance beyond the reasonable control of the Party affected; then the Party affected, upon giving prompt notice to the other Party, will be excused from such performance on a day-for-day basis to the extent of such prevention, restriction, or interference (and the other Party will likewise be excused from performance of its obligations on a performance so prevented, restricted or interfered with), provided that the Party so affected will use its best efforts to avoid or remove such causes of nonperformance and both Parties will proceed to perform with dispatch whenever such causes are removed or cease

SECTION 7. COMMISSION DECISION

This Agreement will at all times be subject to such review by the Commission or FCC as permitted by the Telecommunications Act of 1996. If any such review renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties agree to negotiate in good faith to agree upon any necessary amendments to the Agreement.

SECTION 8. REGULATORY CHANGES

Either Party may request an amendment to take into account any changes in Commission or FCC rules and requirements, including changes resulting from judicial review of applicable regulatory decisions.

SECTION 9. REGULATORY APPROVAL

Each Party is responsible for obtaining and maintaining in effect all state regulatory commission approvals and certifications that are required for that Party's provision of local exchange and/or local exchange access services in the service areas covered by this Agreement. The Parties agree to jointly file this Agreement with the Commission and to fully cooperate with each other in obtaining Commission approval. Notwithstanding this Section 9 or any other provision of this Agreement, BLTC has not waived its status or rights as a telephone cooperative in Tennessee pursuant to, but not limited to, Tennessee Code Annotated 65-4-101, 65-29-101, and 65-29-130.

SECTION 10. DIRECTORY LISTINGS

10.1 Introduction

This Directory Listings section sets forth terms and conditions with respect to the inclusion of FCA's customer listings in BLTC's published directories.

10.1.1 In those areas where FCA and BLTC both provide local exchange telephone service and have established interconnection for the exchange of traffic pursuant to the terms of this Agreement (defined as the "Listing Area"), BLTC or its contractors will include White Pages and Yellow Pages listing information for FCA's end users in the Listing Area in appropriate BLTC directories provided that FCA provides listing information to BLTC on a timely basis. BLTC will include the White Pages and Yellow Pages listing information in BLTC directories at no charge to FCA provided that FCA provides subscriber listing information at no charge to BLTC.

10.1.2 Any references in this Section 10 to BLTC procedures, practices, requirements, or words of similar meaning, shall also be construed to include those of BLTC's contractors that produce directories on its behalf.

10.2 Directory Listings

10.2.1 At no charge to FCA, BLTC will include in appropriate White Pages directories the primary alphabetical listings of those end users located within the Listing Area.

10.2.2 At no charge to FCA, BLTC agrees to include one basic White Pages listing for each FCA customer located within the geographic scope of BLTC's White Page Directories within the Listing Area.

and a courtesy Yellow Page listing for each FCA business customer located within the geographical scope of BLTC's Yellow Page directories. A basic White Page listing is defined as a customer name, address, and assigned number. Basic White Pages listings of FCA customers will be inter-filed with listings of BLTC and other LEC customers. Directory listings will make no distinction between FCA and BLTC subscribers.

10 2 3 FCA may obtain on behalf of FCA's customers secondary White Page listings from BLTC, and BLTC agrees to provide to FCA secondary White Page listings at the same rate(s) charged to BLTC's end user customers.

10 2 4 For the listings provided by FCA for inclusion in BLTC's directories, FCA will furnish to BLTC on a timely basis subscriber listing information as required to prepare and print the alphabetical listings of said directory.

10 2 5. The Parties will cooperate in the development of a suitable timetable for the submission of customer listing information for inclusion in the appropriate BLTC directories. FCA will provide subscriber listing information to BLTC in such format as is consistent with a base listing format normally provided to publishers of directories. FCA will use reasonable commercial efforts to provide the subscriber listing information in a format that will accommodate inclusion on a mechanized basis in the BLTC directory publishing process. BLTC will not impose on FCA any service order or any other charges for processing, handling, or inclusion of FCA's listings pursuant to this Section 10.

10 3 Limitation Of Liability And Indemnification

10 3 1 Neither Party will be liable to the other Party for any losses or damages arising out of errors, interruptions, defects, failures, delays, or malfunctions relating to the White Pages listings and services, including any and all associated equipment and data processing systems, unless said losses or damages result from the indemnifying party's gross negligence or willful or wanton or intentional misconduct.

10 3 2 FCA shall defend, indemnify and hold BLTC and its affiliates, officers and agents harmless from any and all third party claims, suits, actions, demands, costs, settlements losses, damages expenses and all other liabilities, including reasonable attorney fees arising out of or resulting from a breach of contract, breach of warranty and/or the intentional and negligent acts or omissions on the part of FCA, its employees, officers, affiliates and agents in the performance of, or failure to perform, the activities contemplated by this Section 10 of this Agreement including, but not limited to, the provision of customer listing information on an accurate and timely basis. BLTC shall defend, indemnify and hold FCA and its affiliates, officers and agents harmless from any and all third party claims, suits, actions, demands, costs, settlements losses, damages expenses and all other liabilities, including reasonable attorney fees arising out of or resulting from a breach of contract, breach of warranty and/or the intentional and negligent acts or omissions on the part of BLTC, its employees, officers, affiliates and agents in the performance of, or failure to perform, the activities contemplated by this Section 10 of this Agreement.

10 3 3 Notwithstanding any other provisions of this Agreement, the Parties agree that (a) BLTC has no legal duty or obligation to publish any FCA customer listing in any BLTC directory with respect to any FCA customer for which FCA does not provide BLTC the FCA customer listing information in accordance with this Section 10 of this Agreement, and (b) BLTC will not be liable to FCA or any FCA customer, for BLTC's failure to publish any FCA customer listing in any BLTC directory with respect to any FCA customer which FCA does not provide to BLTC the FCA customer listing information in accordance with this Section 10 of this Agreement.

SECTION 11. SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996

The Parties agree that the provisions of Section 252 of the Telecommunications Act of 1996, including but not limited to Section 252(i), shall apply to this Agreement, together with Tennessee Regulatory Authority and FCC interpretive regulations in effect from time to time.

SECTION 12. TERM OF AGREEMENT

12.1 **Term** Subject to the termination provisions contained in this Agreement, the initial term of this Agreement shall be one (1) year from the effective date referenced in Section 13 of this Agreement. This Agreement shall continue in force and effect for consecutive one (1) year terms unless on a date no less than three (3) months prior to the expiration of the initial term or any subsequent term, either Party requests the commencement of negotiations pursuant to Section 252 of the Act on a new Agreement. The termination provisions in this section do not at any time affect either Party's rights under Section 252(i) of the Act.

12.2 **Post-Termination Arrangements** For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties, (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act, or c) under any agreement available according to the provisions of Section 252(i) of the Act.

SECTION 13. EFFECTIVE DATE

13.1 This Agreement will become effective upon

(a) issuance of a final order by a regulatory body or court with the requisite jurisdiction to grant FCA with all necessary regulatory approval and certification to offer local exchange and local exchange access services in the geographic areas to which this Agreement applies; and

(b) approval of this Agreement by the Commission

The Parties recognize that, in the absence of a final order under subsection (a) immediately above, a question of law exists with respect to whether the Commission has statutory authority to authorize FCA or any other carrier to provide local exchange and/or local exchange access services in the areas of the State of Tennessee served by BLTC or other telephone cooperatives. Notwithstanding this uncertainty, the Parties have acted in good faith to negotiate this Agreement and fulfill their obligations under the Act in order to avoid unnecessary dispute and delay. By executing this Agreement, neither Party waives any right with respect to issues related to the position either Party may assert in any forum with respect to issues related to the matter of the Commission's statutory authority with respect to geographic areas served by telephone cooperatives or any other matters.

SECTION 14. AMENDMENT OF AGREEMENT

The Parties may mutually agree to amend this Agreement in writing. Because it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives, the Parties agree to work cooperatively, promptly, and in good faith to negotiate and implement any such additions, changes, and/or corrections to this Agreement. Any amendment must be made in writing.

SECTION 15. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER IN CONNECTION WITH THE PROVISION OR USE OF SERVICES PROVIDED UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS, COST, CLAIM, INJURY, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, RELATING TO OR ARISING OUT OF ANY ORDINARY NEGLIGENT ACT OR OMISSION BY A PARTY. IN NO EVENT

WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, INCOME OR REVENUE, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY AND WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT AT THE TIME THIS AGREEMENT WAS EXECUTED

SECTION 16. INDEMNITY

Each Party will indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for (a) personal injuries, including death, or (b) damage to tangible property resulting from the sole negligence and/or sole willful misconduct of that Party, its employees or agents in the performance of this Agreement. Each Party will defend the other at the other's request against any such liability, claim, or demand. Each Party will notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

SECTION 17. ASSIGNMENT

This Agreement may not be assigned to another Party without written consent of the other Party, which consent will not be unreasonably withheld.

SECTION 18. CONTROLLING LAW

This Agreement was negotiated by the Parties in accordance with the terms of the Telecommunications Act of 1996 and the laws of the State of Tennessee. It will be interpreted solely in accordance with the terms of the Telecommunications Act and applicable state law.

SECTION 19. DEFAULT

If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give sixty (60) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution procedures set forth in this Agreement.

SECTION 20. NONDISCLOSURE

20.1 "Confidential Information" as used herein means any information in written, oral, or other tangible or intangible forms which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer names, and other technical, financial, or business information, which is designated as "confidential" or "proprietary" by either Party in the belief that it contains a trade secret or other confidential research, development, or commercial or financial information.

20.2 All written Confidential Information to be covered by this Agreement will be identified by a restrictive legend which clearly specifies the proprietary nature of the information.

20.3 If the Confidential Information is provided orally, it will be deemed to be confidential or proprietary if specifically identified as such by either Party or if the information is clearly recognizable to be of a confidential and proprietary nature.

20.4 Any Confidential Information produced, revealed, or disclosed by either Party to the other will be used exclusively for purposes of business discussions, negotiations, fulfilling the terms of this Agreement, and/or other purposes upon such terms and conditions as may be agreed upon between the Parties in writing, and will be kept separately from other documents and materials.

20.5 All persons receiving access to Confidential Information will not disclose it nor afford access to it to any other person not specifically authorized by this Agreement to obtain the Confidential Information.

nor will such Confidential Information be used in any other manner or for any other purpose than as provided in this Agreement. No copies or reproductions will be made of any Confidential Information or any part thereof, whether by mechanical, handwritten, or any other means, without the prior written consent of the Party providing it. This Agreement authorizes distribution, disclosure or dissemination only to employees and duly authorized agents of the parties with a need to know such Confidential Information and which employees and agents agree to be bound by the terms of this Section.

20.6 Upon request by the disclosing Party, the receiving Party will return all tangible copies of Confidential/Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

20.7 Notwithstanding any other provision of this Agreement, this section will apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

20.8 These obligations shall not apply to any Confidential Information that (1) was legally in the recipient's possession prior to receipt from the source, (2) was received in good faith from a third party not subject to a confidential obligation to the source, (3) now is or later becomes publicly known through no breach of confidential obligation by the recipient, (4) was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or (5) that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however with respect only to this last exception that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

20.9 The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

SECTION 21. DISCLAIMER OF AGENCY; NO THIRD PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-Party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

SECTION 22. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

SECTION 23. NO LICENSE

23.1 Nothing in this Agreement shall be construed as the grant of a license, whether express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the parties granting such rights

23.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software of the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim

23.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY

SECTION 24. JOINT WORK PRODUCT

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party

SECTION 25. NON-WAIVER

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege

SECTION 26. ENTIRE AGREEMENT

This Agreement and any Exhibits, Schedules, or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby

SECTION 27. TAXES

It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provision will apply. Any state or local excise, sales, or use taxes, if any (excluding any taxes levied on income), resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party

SECTION 28. FEES/REGULATORY CHARGES

It is the mutual understanding of the Parties to this Agreement that there are no regulatory fees or regulatory surcharges specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that regulatory fees or regulatory surcharges are applicable to the subject matter of this Agreement, then the following provision will apply. If any regulatory fee or regulatory surcharge imposed by a regulatory authority arises from the performance of this Agreement, the Party required by the regulatory agency to collect the fees/surcharge and to remit the fees/surcharge to the regulatory agency will be responsible for the fee/surcharge. Fees/Regulatory Surcharges shall include but not be limited to E911/911, E311/321, franchise fees, Lifeline, hearing impaired, and Commission surcharges.

SECTION 29. TREATMENT OF INFORMATION SERVICE PROVIDER TRAFFIC

29.1 For purposes of this Agreement, an "Information Service Provider" or an "ISP" is an entity, including but not limited to an Internet service provider, that provides information services, and "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.

29.2 The Parties recognize that the network treatment of traffic directed to ISPs is unresolved and the subject of industry wide controversy and regulatory review. The Parties further recognize that the long term resolution of issues related to ISP traffic could affect both Parties and may necessitate modification to this Agreement. In recognition of these factors, the Parties agree to switch and transport ISP traffic in the manner described below in this Subsection subject to amendment upon written agreement of the Parties.

29.3 The Parties acknowledge that under current network and service arrangements, ISP traffic may be switched and transported as if this ISP traffic were actual local (i.e., local exchange and/or EAS traffic). The Parties will switch, transport, and deliver ISP traffic under these conditions until such time as a regulatory authority, court, or a legislative body addresses alternative treatment of this traffic. The switching, transport, and delivery of ISP traffic over local interconnection facilities by either Party, however, shall not be construed as either agreement or acknowledgment by the Parties that this arrangement is proper. In the event that the manner in which ISP traffic shall or may be treated is determined by an appropriate regulatory or legal body, or in the event that any action or decision of an appropriate regulatory or legal body results in a determination that the interim treatment of ISP traffic pursuant to this Subsection is unlawful, improper, or not specifically required, the Parties will negotiate in good faith immediate modification and/or replacement language to this Agreement to effect new terms and conditions consistent with any such lawful action or determination. Any new or modified terms shall be effective with the effective date of any such lawful action or determination regarding the treatment of ISP traffic between the Parties.

29.4 The Parties agree that the mutual provisions and relative obligations set forth in Sections 29.2 and 29.3 represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and as a result of these provisions, neither Party will owe a net due amount to the other Party for switching, transport, termination, or delivery of ISP traffic.

SECTION 30. EXECUTION IN DUPLICATE

This Agreement may be executed in duplicate copies, and, upon said execution, will be treated as an executed document.

SECTION 31. HEADINGS

The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

SECTION 32. NOTICES

Except as otherwise provided under this Agreement, any notices, demands, or requests made by either Party to the other Party hereunder will be in writing and will be deemed to have been duly given on the date received. If hand delivered, any such notice, demand, request, election or other communication will be deemed to have been received on the day received, if sent by first class mail, the day received, if sent by overnight courier, the day after delivery to the courier, and if sent by electronic facsimile and followed by an original sent via overnight or first class mail, the date of confirmation of the facsimile. All notices, demands, requests, elections, or other communications hereunder will be addressed as follows:

For BLTC
Ben Lomand Telephone Cooperative, Inc
Attn: Levoy Knowles
311 North Chancery Street
P O Box 670
McMinnville, Tennessee 37111
Tel (931) 668-4131
Fax (931) 668-6646

and to FCA, addressed as follows
Frontier Communications of America, Inc
Attn: Director -- Carrier Relations
180 S Clinton Avenue
Rochester, New York 14646
Tel (585) 777-7124
Fax (585) 424-1196

Any Invoices should be sent to
Frontier Communications of America, Inc
Attn: Access Verification
14500 Burnhaven Drive, Suite 193
Burnsville, Minnesota 55306

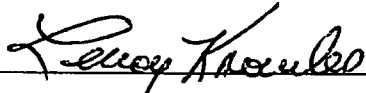
Each Party will inform the other in writing of any changes in the above addresses.

The Parties have caused this Local Wireline Network Interconnection Agreement to be executed on their behalf on the dates set forth below:

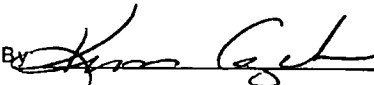
BEN LOMAND TELEPHONE
COOPERATIVE, INC

FRONTIER COMMUNICATIONS OF
AMERICA, INC

By



By



Typed Levoy Knowles

Typed

Kim Czark

Title Chief Executive Officer

Title

Director Carrier Svcs

Date

7/16/04

Date

7/21/04

ATTACHMENT A
INTERCONNECTION TRUNKING ARRANGEMENTS
AND
SPECIFIED POINTS OF INTERCONNECTION

BLTC SWITCH LOCATION (CLLI Code)	FCA POI (CLLI Code)	RC (Rate Center)	FCA NPA NXX
DOYLTNXARS0	Existing Pole on North Chancery St	Doyle	TBA
MMRLTNZXADS0	Existing Pole on North Chancery St	McMinnville	TBA
SPRLTNXARSC	Existing Pole on North Chancery St	Sparta	TBA
DRSTTNXARS0	Existing Pole on North Chancery St	Bon DeCroft	TBA
RCISTNXARS0	Existing Pole on North Chancery St	Rock Island	TBA
SPNCTNXARS0	Existing Pole on North Chancery St.	Spencer	TBA

ATTACHMENT B
GRADE OF SERVICE REQUIREMENTS

All Interconnection Facilities will meet Industry Standard of Engineering, Design and Operation

The Grade of Service for all Facilities between BLTC's End Office or Tandem and FCA will be engineered to achieve P 01 Grade of Service

H

Federal Communications Commission (F.C.C.)

Memorandum Opinion and Order

IN THE MATTER OF AVR, L.P. D/B/A HYPERION OF TENNESSEE, L.P. PETITION FOR
PREEMPTION OF TENNESSEE CODE ANNOTATED § 65-4-201(D) AND TENNESSEE REGULATORY
AUTHORITY DECISION DENYING HYPERION'S APPLICATION REQUESTING AUTHORITY TO
PROVIDE SERVICE IN TENNESSEE RURAL LEC SERVICE AREAS
CC Docket No. 98-92

FCC 99-100

Adopted: May 14, 1999

Released: May 27, 1999

***11064** By the Commission:

1. On May 29, 1998, AVR, L.P. d/b/a Hyperion of Tennessee, L.P. (Hyperion) filed the above-captioned petition (Petition) asking the Commission to: (i) preempt Tenn. Code Ann. § 65-4-201(d), and (ii) preempt the enforcement of the April 9, 1998, order of the Tennessee Regulatory Authority (Authority or Tennessee Authority) denying Hyperion a Certificate of Public Convenience and Necessity (CPCN) to provide local exchange service in areas of Tennessee served by the Tennessee Telephone Company (Denial Order). [FN1] Hyperion also asks the Commission to direct the Tennessee Authority to grant Hyperion's application for a CPCN. [FN2] Hyperion asserts that the Tennessee Authority's Denial Order and Tenn. Code Ann. § 65-4-201(d) violate section 253(a) of the Communications Act of 1934, as amended, [FN3] ***11065** fall outside the scope of authority reserved to the states by section 253(b) of the Act, [FN4] and thus satisfy the requirements for preemption by the Commission pursuant to section 253(d) of the Act. [FN5]

2. For the reasons described below, we grant Hyperion's Petition in part and deny it in part. Specifically, we preempt the enforcement of the Tennessee Authority's Denial Order and Tenn. Code Ann. § 65-4-201(d), [FN6] but we decline to direct the Tennessee Authority to grant Hyperion's CPCN application. We expect, however, that upon a request from Hyperion, the Authority will expeditiously reconsider Hyperion's CPCN application in a manner consistent with the Communications Act and with this Memorandum Opinion and Order.

II. BACKGROUND

3. Hyperion is a facilities-based competitive local exchange carrier operating in twelve states. [FN7] Hyperion has constructed a fiber-based network in the Nashville, Tennessee area, and is in the process of extending that network into outlying areas of Tennessee, including areas currently served by the Tennessee Telephone Company (Tennessee Telephone). [FN8] Tennessee Telephone serves fewer than 100,000 residential and business customers in Tennessee. [FN9]

4. On August 24, 1995, the Tennessee Public Service Commission (TPSC, the

predecessor to the Tennessee Authority) found that Hyperion possessed the requisite technical, managerial, and financial qualifications to render local exchange services, and granted *11066 Hyperion a CPCN to provide such services in Tennessee. [FN10] The following March, however, the TPSC issued an order limiting Hyperion's certificate to only those areas of Tennessee that are served by companies having 100,000 access lines or more within the state. [FN11] The TPSC explained that, under Tennessee law, incumbent LECs serving fewer than 100,000 access lines were protected from competition "until the incumbent LEC either '... voluntarily enters into an interconnection agreement with a Competing Telecommunications Service Provider' or the incumbent LEC ... 'applies for a certificate to provide telecommunications services in an area outside its service area.'" [FN12]

5. Hyperion, believing the restriction to be inconsistent with the 1996 Act, petitioned the Tennessee Authority on January 2, 1998, for permission to extend its service into the areas served by Tennessee Telephone. On April 9, 1998, the Authority denied Hyperion's application. The Authority based its denial on Tenn. Code Ann. § 65-4-201, which in relevant part provides:

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules, and orders, and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on the June 6, 1995. [FN13]

*11067 6. The transcript of the Tennessee Authority's March 10, 1998, hearing denying Hyperion's application reveals that disagreement arose within the Authority on the effect of Tenn. Code Ann. § 65-4-201(d) on Hyperion's petition. [FN14] The incumbent LEC into whose service territory Hyperion wished to expand, Tennessee Telephone, served fewer than 100,000 access lines in Tennessee, so it clearly fell within the class protected from competition by Tenn. Code Ann. § 65-4-201(d). During the hearing, however, the Authority's Chairman argued that subsection (d) was inconsistent with the 1996 Act's purpose and the plain meaning of section 253(a), which preempts state legal requirements that prohibit the provision of telecommunications service. [FN15] The Authority's two other Directors argued that subsection (d) lay within the regulatory authority reserved to the states in section 253(b), which excludes from preemption state or local requirements necessary to protect universal service and certain other public interest goals, if such requirements are competitively neutral and consistent with the Act's universal service provisions. [FN16] In its Denial Order, the Authority concluded that Tenn. Code Ann. § 65-4-201(d) does satisfy the requirements of section 253(b), and that

therefore section 253(b) operates as a limitation on Hyperion's challenge under 253(a). [FN17] Hyperion contends that Tenn. Code Ann. § 65-4-201(d) is inconsistent with section 253 and with Commission precedent, and on that basis petitions us to preempt Tenn. Code Ann. § 65-4-201(d) and the Tennessee Authority's Denial Order. [FN18]

7. In assessing whether to preempt enforcement of the Denial Order and Tenn. Code Ann. § 65-4-201(d) pursuant to section 253, we first determine whether those legal requirements are proscribed by section 253(a), which states:

No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the *11068 ability of any entity to provide any interstate or intrastate telecommunications service. [FN19]

8. If we find that the Denial Order and Tenn. Code Ann. § 65-4-201(d) are proscribed by section 253(a) considered in isolation, we must then determine whether, nonetheless, they fall within the reservation of state authority set forth in section 253(b), which provides:

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. [FN20]

9. If the Denial Order and Tenn. Code Ann. § 65-4-201(d) are proscribed by section 253(a), and do not fall within the scope of section 253(b), we must preempt the enforcement of those legal requirements in accordance with section 253(d), which provides:

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency. [FN21]

10. Hyperion maintains that because it has met the technical, managerial, and financial qualifications to provide service, only Tenn. Code Ann. § 65-4-201(d)'s protection of incumbent LECs serving fewer than 100,000 lines, and the Denial Order enforcement of that statutory provision, prevented Hyperion from providing local exchange service in Tennessee Telephone's service areas [FN22] Hyperion further maintains that these legal requirements fall squarely within section 253(a)'s proscription of state legal requirements that prohibit the ability of any entity to provide any telecommunications service. [FN23] According to *11069 Hyperion, Tenn. Code Ann. § 65-4-201(d) and the Denial Order are virtually identical to two previous state requirements which ran afoul of section 253(a), and which the Commission preempted in the Texas Preemption Order and Silver Star Preemption Order decisions. [FN24]

11. Neither the Tennessee Authority nor TDS Telecommunications Corporation (TDS) argues that the Denial Order or Tenn. Code Ann. § 65-4-201(d) can survive section 253(a) considered in isolation, but they insist that the statutory provision and the Denial Order fall within the reservation of state authority provided in 253(b) [FN25] Specifically, the Tennessee Authority argues that Tenn. Code Ann. § 65-4-

201(d) falls within section 253(b) because the provision is necessary to preserve and advance universal service and other public welfare goals, [FN26] and because the provision applies in a competitively neutral manner to all non-incumbent LECs. [FN27] The Authority explains that Tenn. Code Ann. § 65-4-201(d) is competitively neutral because the restriction on entry into the service areas of small LECs applies to all providers within the state, and thus they argue that no provider is given a competitive advantage over any other. [FN28] TDS likewise maintains that the Authority's denial of Hyperion's application is a proper exercise of state authority under 253(b) because it is consistent with the universal service provisions of the 1996 Act, [FN29] is necessary to protect consumer interests, [FN30] and is competitively neutral. [FN31] TDS contends that potential competing LECs are not subject to the same terms and conditions as incumbent LECs, and that the Tennessee Authority may therefore treat them differently and still maintain competitive neutrality. [FN32] Hyperion and its supporters disagree, and argue that section 253(b) does not exempt Tenn. Code Ann. § 65-4-201(d) and the Denial Order from preemption, because the *11070 code and the Denial Order favor the incumbent LEC over new entrants, and are therefore not "competitively neutral" under section 253(b). [FN33]

III. Discussion

12. We conclude that, in denying Hyperion the right to provide competing local exchange service in the area served by Tennessee Telephone, Tenn. Code Ann. § 65-4-201(d) and the Tennessee Authority's Denial Order violate section 253(a). We further conclude that, because these state and local legal requirements shield the incumbent LEC from competition by other LECs, the requirements are not competitively neutral, and therefore do not fall within the reservation of state authority set forth in section 253(b). Finally, we conclude that, because the requirements violate section 253(a), and do not fall within the boundaries of section 253(b), we must preempt the enforcement of Tenn. Code Ann. § 65-4-201(d) and the Denial Order, as directed by section 253(d)

13. The case before us is similar to two cases the Commission has previously decided. In the Silver Star Preemption Order, the Commission preempted the enforcement of a provision of the Wyoming Telecommunications Act of 1995 [FN34] that empowered incumbent LECs serving 30,000 or fewer access lines in Wyoming to preclude anyone from providing competing local exchange service in their territories until at least January 1, 2005. [FN35] The Commission also preempted the enforcement of an order of the Wyoming Public Service Commission denying, on the basis of that provision, the application of Silver Star Telephone Company to provide competing local service in a neighboring incumbent's local exchange area. [FN36] In ordering the preemption, the Commission determined that the rural incumbent protection provision and the Wyoming Commission's Denial Order fell within the proscription of entry barriers set forth in section 253(a) because they enabled certain incumbent LECs to bar other entities from providing competing local service. [FN37] The Commission found that the rural incumbent protection provision's lack of competitive neutrality placed the Wyoming legal requirements outside the authority reserved to the States by section 253(b). [FN38]

*11071 14. Similarly, in the Texas Preemption Order, [FN39] the Commission preempted a section of the Texas Public Utility Act of 1995 that prohibited the

Public Utilities Commission of Texas from permitting certain competitive LECs to offer service in exchange areas of incumbent LECs serving fewer than 31,000 access lines. [FN40] The Commission found that the moratorium on competition violated the terms of section 253(a) of the Act. [FN41] The Commission also found that the Texas provision did not fall within the exempted state regulation described in section 253(b), because the prohibition was neither competitively neutral nor necessary to achieve any of the policy goals enumerated in section 253(b). [FN42]

15. Our decision here to preempt is consistent with these precedents and comports with the analysis set forth therein. Tennessee's restriction of competition in service areas with fewer than 100,000 access lines is essentially the same as the attempt of both Wyoming and Texas to shield small, rural LECs from competition, and cannot be squared with section 253(a)'s ban on state or local requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." [FN43] Also, as in both the Silver Star and Texas Preemption Orders, we find that the lack of competitive neutrality renders the Tenn. Code Ann. § 65-4-201(d) and the Denial Order ineligible for the protection of section 253(b).

16. We reject the Tennessee Authority's contention that "competitive neutrality" can be interpreted under section 253(b) to mean only that non-incumbents must be treated alike while incumbents may be favored. [FN44] As we explained in our Silver Star Reconsideration, a state legal requirement would not as a general matter be "competitively neutral" if it favors incumbent LECs over new entrants (or vice-versa). [FN45] Neither the language of section 253(b) nor its legislative history suggests that the requirement of competitive neutrality applies only to one portion of a local exchange market - new entrants - and not to all carriers in that market. The plain meaning of section 253(b) and the predominant pro-competitive policy of the 1996 Act undermine the Authority's argument. Indeed, in various similar contexts the Commission has consistently construed the term "competitively neutral" as requiring competitive neutrality among the entire universe of participants and potential participants in a market. [FN46] We reaffirm our holding in the Silver Star Reconsideration that section 253(b) cannot save a state legal requirement from preemption pursuant to sections 253(a) and (d) unless, inter alia, the requirement is competitively neutral with respect to, and as between, all of the participants and potential participants in the market at issue.

17. TDS elaborates on the Authority's argument by contending that competing LECs do not operate under the same terms and conditions as incumbent LECs, and that this disparity in their regulatory obligations permits the Tennessee Authority to treat them differently and still maintain competitive neutrality. [FN47] TDS thus argues that the principle of "competitive neutrality" does not preclude carriers in dissimilar situations from being treated somewhat differently. Providing for "somewhat" different treatment, however, is an entirely distinct proposition from barring competitive entry altogether. [FN48] At the very least, "competitive neutrality" for purposes of 253(b) does not countenance absolute exclusion, and we need not and therefore do not reach the question of the extent to which state commissions may treat competing LECs differently from incumbent LECs in certain instances. We find here that because Tenn. Code Ann. § 65-4-201(d) favors incumbent LECs with fewer than 100,000 access lines by preserving their monopoly status, it raises an insurmountable barrier against potential new entrants in their service areas and therefore is not competitively neutral.

18. That Tenn. Code Ann. § 65-4-201(d) and the Denial Order are not competitively neutral suffices of itself to disqualify these requirements from the 253(b) *11073 exception. [FN49] Therefore, we need not reach the question of whether Tenn. Code Ann. § 65-4-201(d) and the Denial Order are "necessary," or "consistent with section 254" within the meaning of section 253(b). We note, however, that, for the reasons we gave in response to similar arguments that were raised in our Silver Star Preemption Order decision, we remain doubtful that it is necessary to exclude competing LECs from small, rural study areas in order to preserve universal service [FN50] Moreover, by requiring competitive neutrality, Congress has already decided, in essence, that outright bans of competitive entry are never "necessary" to preserve and advance universal service within the meaning of section 253(b). [FN51]

19. TDS introduces three arguments by which it attempts to distinguish the case before us from other cases we have decided under section 253. First, TDS points out that the Tennessee legislature provided for Tenn. Code Ann. § 65-4-201(d) to be examined every two years to reevaluate the "transitional distinction" in treating applications to serve areas served by incumbent LECs with fewer than 100,000 access lines, and contrasts Tennessee's biennial review with the Wyoming statute at issue in the Silver Star Preemption Order, which gave rural incumbent LECs a veto provision that would apply until 2005. [FN52] This is a distinction without a difference for purposes of our analysis because, as we held in the Silver Star Preemption Order, even a temporary ban on competition can be an absolute prohibition, and section 253 does not exempt from its reach State-created barriers to entry that may expire at some later date. [FN53]

*11074 20. Second, TDS argues that "unanticipated confusion and controversy surrounding the universal service plan" justifies the Tennessee Authority's delay of competitive entry into rural areas [FN54] As the Commission has previously stated, we reject the assumption that competition and universal service are at cross purposes, and that in rural areas the former must be curtailed to promote the latter. [FN55] Section 253 is itself evidence that Congress intended primarily for competitive markets to determine which entrants should provide the telecommunications services demanded by consumers. [FN56] We continue to believe that Congress intended new competitors to bring the benefits of competition to rural as well as populous markets. [FN57]

21 Third, TDS contends that even if the Commission is correct in preempting enforcement of the Authority's Denial Order, the Commission should not preempt Tenn. Code Ann. § 65-4-201(d) itself. [FN58] TDS argues that although the Authority has applied the statute to preclude competition in this case, the statute permits the Authority to allow competition in *11075 other circumstances. [FN59] TDS suggests that Tenn. Code Ann. § 65-4-201(d) might therefore be applied in way that would not offend section 253, [FN60] and therefore should be left standing, in obedience to 253(d)'s instruction to the Commission to preempt only "to the extent necessary to correct such violation or inconsistency " [FN61]

22. We are mindful of the limits that section 253 (d) places on our preemption authority. Further, the construction of a state statute by a state commission informs our determination of whether the statute is subject to preemption under section 253. [FN62] In this case, however, TDS's construction of Tenn. Code Ann. §

65-4-201(d) conflicts with that of the Tennessee Authority, which we regard as dispositive. [FN63] According to the Authority, Tenn. Code Ann. § 65-4-201(d) does require the Tennessee Authority to deny any and all CPCN applications within its scope. [FN64] For this reason we reject TDS's argument that Tenn. Code Ann. § 65-4-201(d) may stand even if the Authority's Denial Order must fall. We decline, however, to grant Hyperion's request that we direct the Tennessee Authority to grant Hyperion's application for a CPCN because we do not believe such a step is necessary at this time. [FN65] Based on our explanation regarding the force and effect of section 253 in this case, we expect that the Authority will respond to any request by Hyperion to reconsider Hyperion's application for a concurrent CPCN consistent with the Communications Act and this decision. [FN66]

23. Hyperion brings to our attention that states other than Tennessee have legal requirements that appear to be similar to Tennessee's Section 65-4- 201(d), and maintains that these requirements may also restrict competition in the way we have found unlawful here and in the Silver Star and Texas Preemption Orders. [FN67] Hyperion urges us to clarify generally the *11076 scope of section 253 as it might apply in such cases. [FN68] While the requirements of other states are not before us at this time, we would expect to apply a similar analysis to other state statutes. Thus, we encourage these and any other states, as well as their respective regulatory agencies, to review any similar statutes and regulations, and to repeal or otherwise nullify any that in their judgement violate section 253 as applied by this Commission

IV. ORDERING CLAUSE

24. Accordingly, IT IS ORDERED, pursuant to section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253, that the Petition for Preemption and Declaratory Ruling filed by AVR, L.P. d/b/a/ Hyperion of Tennessee, L.P. on May 29, 1998, IS GRANTED to the extent discussed herein, and in all other respects IS DENIED.

25. IT IS FURTHER ORDERED, pursuant to section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253, that the enforcement of Tenn. Stat. Ann. § 65-4-201(d) and the Denial Order are preempted.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Secretary

FN1. In Re: AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P.; Application for a Certificate of Public Convenience and Necessity to Extend Territorial Area of Operations to Include the Areas Currently Served by Tennessee Telephone Company, Order Denying Hyperion's Application for a Certificate of Public Convenience and Necessity to Extend Territorial Area of Operations to Include the Areas Currently Served by Tennessee Telephone Company, Docket No. 98-0001 (Tennessee Authority Apr.

9, 1998) (Denial Order).

FN2. Petition at 23.

FN3. 47 U.S.C. § 253(a). Section 253 was added to the Communications Act of 1934 (Communications Act or Act) by the Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § § 151 et seq. All citations to the 1996 Act will be to the 1996 Act as codified in Title 47 of the United States Code.

FN4. 47 U.S.C. § 253(b).

FN5. 47 U.S.C. § 253(d). The Commission placed Hyperion's Petition on public notice on June 12, 1998. Pleading Cycle Established for Comments on Hyperion Petition for Preemption of Tennessee Regulatory Authority Order, Public Notice, CC Docket No. 98-92, DA 987-1115 (rel. June 12, 1998). The Association for Local Telecommunications Services (ALTS), KMC Telecom Inc. (KMC), MCI Telecommunications Corporation (MCI), TDS Telecommunications Corporation (TDS), the Tennessee Authority, and WorldCom, Inc. (WorldCom) filed comments, and Hyperion, MCI, and TDS filed replies.

FN6. Tenn. Code Ann. § 65-4-201(d).

FN7. Petition at 2.

FN8. Id.

FN9. Tennessee Telephone Company serves approximately 45,121 residential and 11,665 business customers in Tennessee. AVR of Tennessee, L.P., d/b/a Hyperion Telecommunications of Tennessee, L.P. for a Certificate of Public Convenience and Necessity to Extend its territorial Area of Operations to Include the Areas Currently Served by Tennessee Telephone Company, Application, Petition Exhibit D at 3.

FN10. The Application of AVR, L.P., d/b/a Hyperion of Tennessee, L.P. for a Certificate of Public Convenience and Necessity to Provide Intrastate Point-to-Point and Telecommunications Access Services Within Davidson, Williamson, Maury, Rutherford, Wilson, and Sumner Counties, Tennessee, Docket No. 94- 00661, (TPSC Aug. 24, 1995), Petition Exhibit B.

FN11. The Application of AVR, L.P., d/b/a Hyperion of Tennessee, L.P. for a Certificate of Public Convenience and Necessity to Provide Point-to-Point and Telecommunications Access Service Within the State of Tennessee, Order, Docket No.

94-00661 (TPSC Mar. 8, 1996), Petition Exhibit C, (TPSC Restriction Order).

FN12. TPSC Restriction Order at 5

FN13. Tenn. Code Ann. § 65-4-201; Petition at 4.

FN14 Transcript of the Tennessee Regulatory Authority's March 10, 1998, Hearing Denying Hyperion's Application, Petition Exhibit E (Hearing).

FN15. "I personally believe that the Tennessee Regulatory Authority has a duty to uphold both the vision and the substance of the Federal Communications Act of 1996. This Act provides the framework from which competition in the telecommunications industry can develop Section 253(a) of the Act specifically addresses the prohibition of any State regulation or statute that prohibits the ability of any entity to provide any interstate or intrastate telecommunication service. As I see it, we have a conflict between the federal law and one of our State statutes, and the federal law must prevail." Chairman Greer, Hearing at 7.

FN16. "To be sure, there exists a host of arguments [that] Section 65-4- 201(d) is not competitively neutral as this phrase is defined by the FCC. Nonetheless, given the legislature's rationale for enacting section 65-4- 201(d), the language of section 253(b) as a whole, section 65-4-201(d)'s pronouncement that any such protected interest forfeits its protection if it seeks to compete outside the area, and the requirement that the general assembly review this statute every two years, this statute may be held competitively neutral.... I am persuaded that at a minimum the State of Tennessee should have the opportunity, should it so choose, to argue before the FCC that its statute is, notwithstanding the FCC's prior rulings, competitively neutral." Director Malone, Hearing at 11-12.

FN17 Denial Order at 11.

FN18. Petition at 8.

FN19. 47 U.S.C. § 253(a).

FN20. 47 U.S.C. § 253(b).

FN21. 47 U.S.C. § 253(d).

FN22. Petition at 6. Although Tenn. Code Ann. § 65-4-201(d) does permit competition in areas served by incumbent LECs with fewer than 100,000 access lines when the incumbent LEC enters into an interconnection agreement with the competitor

or itself applies for CPCN outside its service area, neither exception applies to this case.

FN23. Petition at 8.

FN24 Petition at 15-18; The Public Utility Commission of Texas, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3511, ¶ ¶ 106-07 (1997) (Texas Preemption Order); Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15656-57, ¶ ¶ 38-39 (1997) (Silver Star Preemption Order). ALTS, KMC, MCI, and WorldCom agree with Hyperion that the Tennessee statute is in direct conflict with Section 253(a). ALTS Comments at 2; KMC Comments at 2; MCI at Comments at 1, WorldCom Comments at 1-2; AVR Reply at 3; MCI Reply at 1-2.

FN25. Tennessee Authority Comments at 3-6; TDS Comments at 5-15. TDS owns four subsidiaries in Tennessee, one of which is the Tennessee Telephone Company. TDS Comments at 1.

FN26. Tennessee Authority Comments at 3-5.

FN27. Tennessee Authority Comments at 6.

FN28. Id.

FN29. TDS Comments at 6-7.

FN30. TDS Comments at 5-7; TDS Reply at 2-3

FN31 TDS Comments at 8-10; TDS Reply at 3-4.

FN32. Id.

FN33 Petition at 10-11; ALTS Comments at 4; KMC Comments at 3-4; MCI at Comments at 3-5; Hyperion Reply at 3; MCI Reply at 2.

FN34. WYO. STAT. ANN. § § 37-15-101, et seq.

FN35. WYO. STAT. ANN. § 37-15-201(c)

FN36. Application of Silver Star Telephone Company, Inc. for a Certificate of Public Convenience and Necessity to Service the Afton Local Exchange Area, Order Denying Concurrent Certification, Docket No. 70006-TA-96-24 (Wyoming Commission Dec. 4, 1996)

FN37. Silver Star Preemption Order, 12 FCC Rcd at 15656-57, ¶ ¶ 38-39.

FN38. Silver Star Preemption Order, 12 FCC Rcd at 15657-59, ¶ ¶ 41-44

FN39. Texas Preemption Order, 13 FCC Rcd 3460 (1997).

FN40. Texas Public Utility Act of 1995 § 3.2531(h).

FN41. Texas Preemption Order, 13 FCC Rcd at 3511, ¶ 106.

FN42. Texas Preemption Order, 13 FCC Rcd at 3511, ¶ 107.

FN43. 47 U.S.C. § 253(a) (emphasis added).

FN44. Tennessee Authority Comments at 6.

FN45. Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling, Memorandum Opinion and Order, CCBPol 97-1, FCC 98-205, ¶ ¶ 9-10 (rel. Aug. 24, 1998) (Silver Star Reconsideration). See also New England Public Communications Council Petition for Preemption Pursuant to Section 253, Memorandum Opinion and Order, 11 FCC Rcd 19713, 19721-22, ¶ 20 (1996) (holding that legal requirement at issue was not competitively neutral under section 253(b) because "the prohibition allows incumbent LECs and certified LECs to offer payphone services, but bars another class of providers (independent payphone providers)"); Recon. denied, Memorandum Opinion and Order, FCC 97-143 (rel. April 18, 1997)

FN46. See, e.g., Telephone Number Portability, Third Report and Order, FCC 98-82, CC Docket No. 95-116, ¶ 53 (rel. May 12, 1998) (a competitively neutral cost recovery mechanism "(1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return"), Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22132 at ¶ 24 (1997) ("Competitive neutrality would require that separations rules not favor one telecommunications provider over another or one class of providers over another class"); Access Charge Reform Price Cap Performance Review for Local Exchange Carriers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21443-44 at ¶ 206 (1996) ("If in

practice only incumbent LECs can receive universal service support, then the disbursement mechanism is not competitively neutral").

FN47. TDS Comments at 8-10, TDS Reply at 3-4.

FN48. We agree that in order to qualify for protection under section 253(b), a state legal requirement need not treat incumbent LECs and new entrants equally in every circumstance. As the Commission has previously explained: "'non-discriminatory and competitively neutral' treatment does not necessarily mean 'equal' treatment. For instance, it could be a non-discriminatory and competitively neutral regulation for a state or local authority to impose higher insurance requirements based on the number of street cuts an entity planned to make, even though such a regulation would not treat all entities 'equally.'" Implementation of Section 302 of the Telecommunications Act of 1996 (Open Video Systems), Third Report and Order and Second Order on Reconsideration, 11 FCC Rcd 20227, 20310 at ¶ 195 (1996). See Separations NPRM, 12 FCC Rcd at 22132, ¶ 24 ("Competitive neutrality ... would not, however, preclude carriers in dissimilar situations from being treated differently").

FN49. Silver Star Preemption Order, 12 FCC Rcd at 15660, ¶ 45. Accord Texas Preemption Order, 13 FCC Rcd at 3480, ¶ 41; Classic Telephone, Inc., Petition for Preemption, Declaratory Ruling and Injunctive Relief, 11 FCC Rcd. 13082, 13101, ¶ 35.

FN50 Specifically, we noted that section 251(f) of the Act affords rural and small LECs certain avenues of relief from the interconnection duties set forth in sections 251(b) and (c), and that sections 253(f) and 214(e)(2) also provide states special latitude in regulating emerging competition in markets served by rural telephone companies. Section 253(f) permits a state to require a telecommunications carrier to meet certain universal service requirements as a condition for obtaining permission to compete with a rural telephone company. Section 214(e)(2) permits a state, with respect to an area served by a rural telephone company, to decline to designate more than one common carrier as an "eligible telecommunications carrier" for purposes of receiving universal service support. These accommodations to the needs of rural telephone companies indicate that Congress recognized that the special circumstances of rural and small LECs warrant special regulatory treatment. In choosing less competitively restrictive means of protecting rural and small LECs, however, Congress revealed its intent to preclude states from imposing the far more competitively restrictive protection of an absolute ban on competition. Silver Star Preemption Order, 12 FCC Rcd at 15658-59, ¶ ¶ 43-44.

FN51 Silver Star Reconsideration, FCC 98-205, ¶ 19

FN52. TDS at Comments 12 (contrasting Tenn. Code Ann. § 65-5-211 with Wyo. Stat. § § 37-15-101 et seq).

FN53. Silver Star Preemption Order, 12 FCC Rcd at 15657, ¶ 39. We note that the 1996 Act contains numerous deadlines requiring the Commission and State commissions to complete with dispatch various tasks implementing the 1996 Act. See, e.g., 47 U.S.C. § § 251(d)(1), 251(f)(1)(B); 252(e)(4); 254(a), 257(a); 271(d)(3); 276(b). By requiring relatively swift administrative implementation of the pro-competitive provisions of the 1996 Act, these deadlines highlight that Tennessee's statutory delay of competition conflicts with Congressional intent.

FN54. TDS Comments at 14; TDS Reply at 2-3.

FN55. Accord Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8800, ¶ 47 (1997) ("competitive neutrality means that universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another"). See generally Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 267 ¶ 345 (1996) ("We recommend that any competitive bidding system be competitively neutral and not favor either the incumbent or new entrants").

FN56. Silver Star Preemption Order, 12 FCC Rcd at 15656, ¶ 38.

FN57. See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16118, ¶ 1262 (1996) ("We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service.") What the Commission said in the Universal Service Order regarding the "false choice" between competition and universal service also bears reiteration:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

Universal Service Order, 12 FCC Rcd at 8802-03, ¶ 50

FN58. TDS at Comments at 15-18.

FN59. TDS Comments at 15, 17

FN60. TDS states that § 65-4-201(d) allows the Tennessee Authority to obtain

useful information through closer scrutiny of applications to serve rural areas.
TDS Comments at 18.

FN61. TDS Comments at 15.

FN62. See Texas Preemption Order, 13 FCC Rcd at 3464-3466, ¶ 7-11

FN63. Id. See also, e.g., Ginsburg v. New York, 390 U.S. 629, 643-44 (1968).

FN64. TPSC Restriction Order at 4 ("Subsection (d) clearly restricts the authority of the Public Service Commission to grant a certificate to a Competing Telecommunications Service Provider"), see also Denial Order at 8.

FN65. Petition at 23.

FN66. Given our disposition of the Petition on the bases discussed in the text, we need not and do not address the merits of other arguments raised by the parties.

FN67. Hyperion Petition at 21; See Letter from Kecia Boney, MCI Telecommunications Corp., to Magalie R. Salas, Secretary, FCC, Jan. 6, 1999. See also Louisiana, In re Regulations for Competition in the Local Telecommunications Market, General Order, app. B, sec. 201 (LPSC, rel. Apr. 1, 1997) ("TSPs are permitted to provide telecommunications services in all historically designated ILEC services areas . . . with the exception of service areas served by ILECs with 100,000 access lines or less statewide."); New Mexico, N.M. STAT. ANN. § 63-9A-6 D (1997) ("[A]ny telecommunications company with less than one hundred thousand access lines . . . shall have the exclusive right to provide local exchange service within its certificate service territory"); North Carolina, N.C. GEN. STAT. § 62-110 f(2) (1997) ("[The Commission shall not be authorized to issue a certificate] applicable to franchised areas . . . served by local exchange companies with 200,000 access lines or less . . . "); Utah, UTAH CODE ANN. § 54-8b- 2.1(2)(c) (1993) ("An intervening incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the Commission to exclude from an application [filed by a competing LEC] any local exchange with fewer than 5,000 access lines . . . "); and Oregon, OR. REV. STAT. § 759.020 (1989), Admin. Rules Chapter 860, Div. 32, 860-32-005(8)(a) (providing for certification of competing LECs if the ILEC "consents or does not protest").

FN68. Hyperion Petition at 21.

14 F.C.C.R. 11,064, 1999 WL 335803 (F.C.C.), 14 FCC Rcd. 11,064, 15 Communications Reg. (P&F) 1172

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H

Federal Communications Commission (F.C.C.)

Memorandum Opinion and Order

IN THE MATTER OF AVR, L.P. D/B/A **HYPERION OF TENNESSEE**, L.P. PETITION FOR
PREEMPTION OF **TENNESSEE** CODE ANNOTATED SECTION 65-4-201(D) AND **TENNESSEE**
REGULATORY AUTHORITY DECISION DENYING **HYPERION'S** APPLICATION REQUESTING
AUTHORITY TO PROVIDE SERVICE IN **TENNESSEE** RURAL LEC SERVICE AREAS
CC Docket No. 98-92

FCC 01-3

Adopted: January 3, 2001

Released: January 8, 2001

*1247 By the Commission:

I. INTRODUCTION

1. On June 28, 1999, the **Tennessee** Regulatory Authority (**Tennessee** Authority) and TDS Telecommunications Corporation (TDS Telecom) filed petitions for reconsideration of the **Hyperion** Preemption Order. [FN1] In that Order, the Commission granted in part a petition for preemption filed by AVR, L.P. d/b/a **Hyperion of Tennessee**, L.P. (**Hyperion**) in May 1998. In this order we deny those petitions for reconsideration along with a related motion filed by the **Tennessee** Authority for a stay of enforcement of the **Hyperion** Preemption Order.

*1248 II DISCUSSION

2. **Hyperion** originally sought preemption of Tennessee Code section 65-4- 201(d), which barred the entry of competitive carriers into the service areas of incumbent local exchange carriers in **Tennessee** that serve fewer than 100,000 access lines. In addition, **Hyperion** asked that this Commission preempt enforcement of an April 1998 order of the **Tennessee** Authority to the extent that it denied **Hyperion's** application to provide service in the service area of the **Tennessee** Telephone Company. [FN2] The **Tennessee** Authority and TDS Telecom now seek reconsideration of the Commission's determination that the **Tennessee** Authority's Denial Order and Tennessee Code section 65-4-201(d) do not fall within the protection of section 253(b) of the Communications Act of 1934, as amended. [FN3] In addition, on July 9, 1999, the **Tennessee** Authority filed a motion for stay of enforcement of our **Hyperion** Preemption Order until appropriate universal service mechanisms are implemented by the Commission and the **Tennessee** Regulatory Authority. [FN4] **Hyperion** filed an opposition to the **Tennessee** Regulatory Authority's motion for stay of enforcement, dated July 20, 1999, arguing that the **Tennessee** Regulatory Authority failed to establish any of the four conditions necessary to justify a stay of the Commission's Order. [FN5]

3. We deny TDS's and the **Tennessee** Authority's petitions for the following reasons. TDS's petition essentially repeats the same arguments it relied upon in

the comments and reply comments it filed in opposition to the **Hyperion** preemption petition. First, TDS argues that, because the incumbent LEC is regulated differently from competitive LECs, the "competitive neutrality" requirement under section 253(b) of the Communications Act is satisfied even if the *1249 incumbent has special protections as long as all competitive carriers are treated alike. [FN6] In a related argument, TDS argues that competitive imbalances will result from preemption of the statute. [FN7] The Commission rejected these arguments in the **Hyperion** Preemption Order.

4. TDS also argues that, because the **Hyperion** Preemption Order did not allow the **Tennessee** Authority to implement section 65-4-201(d) "to the extent permissible by law," the Commission's blanket preemption of section 65-4-201(d) was needlessly broad. [FN8] The Commission previously considered and rejected this argument, concluding that the **Tennessee** Authority's own interpretation of Tennessee Code section 65-4-201(d), which the Commission regards as dispositive, made section 65-4-201(d) inconsistent with federal law in every circumstance. [FN9] TDS has failed to identify any redeemable portion of the preempted law [FN10] Accordingly, we conclude that the Commission's preemption was in fact limited to the extent necessary to correct the violation of federal law in accordance with section 253(d) of the Communications Act. TDS's petition fails to raise new arguments or facts that would warrant reconsideration of that order

5. The **Tennessee** Authority also repeats in its petition for reconsideration the arguments it made regarding the **Hyperion** preemption petition. Those arguments include: (1) that preemption of Tennessee Code section 65-4-201(d) is not competitively neutral to **Tennessee** rural incumbent carriers because these carriers have obligations under state and federal laws that are not imposed on new entrants, [FN11] (2) that Tennessee Code section 65-4-201(d) is necessary to *1250 preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers within the state of **Tennessee**; [FN12] and (3) that the Commission did not fully consider the unity of purpose behind the 1996 Act and Tennessee Code section 65-4-201(d) [FN13] That both the 1996 Act and section 65-4-201(d) address similar concerns about the effect of competitive entry on rural incumbent carriers does not insulate the **Tennessee** statute from section 253 preemption. Instead, Congress appears to have entirely occupied the field of regulating rural competitive entry when it addressed the issue comprehensively in sections 251(f) and 153(37). [FN14] Just as TDS Telecom and the **Tennessee** Authority raise no new arguments or facts that warrant reconsideration of the **Hyperion** Preemption Order, the **Tennessee** Authority raises no new arguments or facts that warrant a stay of enforcement. [FN15]

6. Accordingly, IT IS ORDERED, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by TDS Telecommunications Corporation and the petition for reconsideration filed by the **Tennessee** Regulatory Authority, both dated June 28, 1999, ARE DENIED.

7. IT IS FURTHER ORDERED, that the **Tennessee** Regulatory Authority's motion for stay of enforcement, filed on July 9, 1999, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Secretary

FN1. AVR, L.P., d/b/a **Hyperion** of Tennessee, L P., Petition for Preemption of **Tennessee** Code Annotated Section 65-4-201(d) and **Tennessee** Regulatory Authority Decision Denying **Hyperion's** Application Requesting Authority to Provide Service in **Tennessee** Rural LEC Service Areas, Memorandum Opinion and Order, CC Docket No. 98-92, 14 FCC Rcd 11064 (1999) (**Hyperion** Preemption Order).

FN2. In Re: AVR of **Tennessee**, L P d/b/a **Hyperion** of **Tennessee**, L.P., Application for a Certificate of Public Convenience and Necessity to Extend Territorial Area of Operations to Include the Areas Currently Served by **Tennessee** Telephone Company, Order Denying **Hyperion's** Application for a Certificate of Public Convenience and Necessity to Extend Territorial Area of Operations to Include the Areas Currently Served by **Tennessee** Telephone Company, Docket No. 98-0001 (**Tennessee** Authority Apr. 9, 1998) (Denial Order). The **Tennessee** Telephone Company is a wholly-owned subsidiary of TDS Telecom.

FN3. 47 U.S.C. § 253(b). Section 253 was added to the Communications Act of 1934 (Communications Act or Act) by the Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § § 151 et seq. All citations to the 1996 Act in this order are to the 1996 Act as codified in Title 47 of the United States Code. Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Section 253(b) states that "[n]othing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(b).

FN4. **Tennessee** Regulatory Authority Motion for Stay at 1.

FN5. The Commission applies a four-part test in consideration of motions for stay. See Virginia Petroleum Jobbers Ass'n, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). To justify a stay, the **Tennessee** Regulatory Authority must demonstrate (1) a likelihood of success on the merits, (2) irreparable harm in the absence of a stay, (3) the absence of any substantial harm to other interested parties if the stay is granted, and (4) that public interest favors the stay.

FN6. TDS Petition for Reconsideration at 5-6, 10 TDS made this argument in its comments at 5-7 and its reply comments at 2 The Commission rejected the argument in the **Hyperion** Preemption Order, 14 FCC Rcd at 11071-72, ¶ ¶ 15-16

FN7. TDS Petition for Reconsideration at 6-8. TDS made this argument in its comments at 8-11 and its reply comments at 3-4. The Commission rejected the argument in the Hyperion Preemption Order, 14 FCC Rcd at 11072, ¶ 17.

FN8. TDS Petition for Reconsideration at 12. TDS appears to be referring to section 253(d) of the Communications Act instead of section 253(b). TDS made this argument in its comments at 15-18.

FN9. Hyperion Preemption Order, 14 FCC Rcd 11075, ¶ 22.

FN10. We note that the scope of section 65-4-201(d) is extremely limited and that its preemption does not impinge on any of the **Tennessee** Authority's general safeguards. Tenn. Code. Ann. 65-4-201(d) states, in its entirety, "Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on the June 6, 1995."

FN11. **Tennessee** Authority Petition for Reconsideration at 4 - 7. The **Tennessee** Authority made this same argument in its comments regarding the Hyperion Preemption Petition. Comments in Response to Hyperion Petition for Preemption, filed July 13, 1998, at 6, ¶ 8. The Commission previously considered and rejected this argument in the Hyperion Preemption Order, stating that "[n]either the language of section 253(b) nor its legislative history suggests that the requirement of competitive neutrality applies only to one portion of a local exchange market - new entrants - and not to the market as a whole, including the incumbent LEC." Hyperion Preemption Order, 14 FCC Rcd at 11071-72, ¶ 16, citing Silver Star Reconsideration Order, 13 FCC Rcd 16359 (1998). The United States Court of Appeal for the Tenth Circuit recently affirmed the Commission's Silver Star Reconsideration Order in RT Communications, Inc. v. FCC, 201 F.3d 1264 (10th Cir. 2000).

FN12. **Tennessee** Authority Petition for Reconsideration at 8-11. The Commission rejected this argument at Hyperion Preemption Order, 14 FCC Rcd at 11074, ¶¶ 18, 20.

FN13. **Tennessee** Authority Petition for Reconsideration at 11-13; Hyperion Preemption Order, 14 FCC Rcd at 11074, ¶¶ 18, 20.

FN14. See 47 U.S.C. § 153(37); 47 U.S.C. § 251(f). See also 47 U.S.C. § 253(f).

FN15. The **Tennessee** Authority recognizes that a party seeking a stay must demonstrate, among other criteria, that it is likely to prevail on the merits.

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(Cite as: 16 F.C.C.R. 1247)

Tennessee Authority Motion at 1. Therefore, in as much as we decide against the **Tennessee** Authority on the merits, the **Tennessee** Authority's motion for a stay of enforcement is denied.

2001 WL 12939 (F.C.C.), 16 F.C.C.R. 1247, 16 FCC Rcd. 1247

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